

**SECTION 1602 EXCHANGE PROGRAM GUARANTY AGREEMENT
MEMBERS OF GENERAL PARTNER**

THIS GUARANTY AGREEMENT made as of _____, 2009 by and between _____ and _____ (hereinafter collectively, the “Guarantors”) and Arkansas Development Finance Authority (“ADFA”) for the benefit of ADFA, its successors and assigns.

RECITALS:

WHEREAS, _____ and _____ are members/partners of the General Partner of _____ Partnership (“the Owner”);

WHEREAS, the above-identified parties have agreed to guarantee an amount proportionate to their interest in the General Partner of the Owner of the grant described herein in exchange for ADFA’s award of funding under the Section 1602 Exchange Fund Program (“Section 1602 Exchange Fund Program”) of the American Recovery and Reinvestment Tax Act to Owner.

WHEREAS, Guarantors believe they will substantially benefit, directly and indirectly, from the awarded funding described herein.

NOW THEREFORE, in consideration of ADFA’s award of funding as described herein, it is hereby covenanted and agreed as follows:

1. Section XIII of the Section 1602 Exchange Fund Agreement requires that the Owner fully indemnify ADFA for all claims brought against, and losses of, ADFA, its officers, agents, directors and employees that arise from this agreement. The Section 1602 Exchange Fund Agreement executed by the Owner, are incorporated hereto by reference as if set forth word for word.
2. ADFA has full recourse against the Owner for any and all breaches of the Section 1602 Exchange Fund Agreement.
3. Each Guarantor irrevocably and unconditionally fully guarantees their proportionate share (“Proportionate Share”) of the prompt and complete payment of all sums that become due and owing from the Owner to ADFA, the United States Treasury (“Treasury”) and the United States Department of Housing and Urban Development (“HUD”) as a result of a breach of the Section 1602 Exchange Fund Agreement or due to indemnification, up to the amount of funding awarded thereunder (the “Section 1602 Funding”). Proportionate Share shall equal each guarantor’s percentage ownership interest of the General Partner. Each Guarantor’s Proportionate Share of the Section 1602 Funding for which each is liable is set forth in Section 5 herein.

4. The Owner was awarded \$_____ in Section 1602 Exchange funds on _____, 2009.
5. Thus, each Guarantor guarantees to pay to ADFA, Treasury and/or HUD all sums that become due and owing from the Owner to ADFA, Treasury and/or HUD, up to the maximum amount of this guaranty, \$_____ and \$_____ respectively. The maximum amount guaranteed hereunder shall decrease annually by 1/15th of the total amount only if the development remained in compliance for the entirety of the preceding compliance year and ADFA has acknowledged such fact in writing to the Owner.
6. The liability of the Guarantors shall not be affected, impaired, or reduced in any way by any action taken by ADFA or by any delay, failure to refusal of ADFA to exercise any right or remedy it may have against the Owner or any other person, firm or corporation, liable for all or any part of the Section 1602 Funding or any of the other obligations guaranteed hereby.
7. Guarantors agree that if any of the Section 1602 Funding become due and owing to ADFA and any part of such Section 1602 Funding is not fully and timely paid to ADFA, Guarantors shall immediately upon receipt of written demand from ADFA, Treasury and/or HUD pay the amount of Funding hereby guaranteed in like manner as if the Section 1602 Funding constituted the direct and primary obligation of Guarantors. The Guarantors shall not have any right of subrogation as a result of any payment hereunder and Guarantors hereby waive, release and relinquish any claim based on any right of subrogation, any claim for unjust enrichment or any other theory that would entitle a Guarantor to a claim against the Owner based on any payment made hereunder or otherwise on account of the Section 1602 Funding.
8. Guarantors hereby waive and agree not to assert or take advantage of:
 - a. Any right to require ADFA to proceed against the Owner or any other person or to proceed against or exhaust any security held by ADFA at any time or to pursue any other remedy in ADFA's power before proceeding against each Guarantor hereunder;
 - b. The defense of the statute of limitations in any action hereunder or in any action for the collection of the Section 1602 Funding or the performance of any other obligations guaranteed hereby;
 - c. Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or the failure of ADFA to file or enforce a claim against the estate (in administration, bankruptcy, or any other proceeding) of any other person or persons;
 - d. Demand, presentment for payment, notice of non-payment, protest, notice of protest and all other notices of any kind;
 - e. Any defense based upon an election of remedies by ADFA, the right of a Guarantor to proceed against ADFA for reimbursement, or both;

- f. Any election by ADFA to exercise any right or remedy it may have against the Owner or any security held by ADFA;
 - g. All duty or obligation on the part of ADFA to perfect, protect, not impair, retain or enforce any security for the payment of the Section 1602 Funding or performance of any of the other obligations guaranteed hereby;
 - h. The defense that the Section 1602 Exchange Fund Agreement was not breached, if a Guarantor's liability arises under the indemnification provisions therein;
 - i. Any defense arising from ADFA's joinder or lack of joinder of the Owner in an action brought and prosecuted against a Guarantor.
- 9. Guarantor hereby agrees to pay to ADFA, upon demand, reasonable attorney's fees and all costs and other expenses that ADFA expends or incurs in collecting for, compromising the Section 1602 Funding or in enforcing this Guaranty Agreement against a Guarantor, whether or not suit is filed, including but not limited to all attorney's fees, costs and expenses incurred by ADFA in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way potentially affects ADFA's right and remedies hereunder or the exercise thereof.
- 10. In any right of action that may accrue to ADFA by reason of any obligations guaranteed hereunder, ADFA may, at its option, proceed against (a) a Guarantor, together with the Owner, (b) a Guarantor and the Owner individually, or (c) a Guarantor only, without having first proceeded against the Owner. In any right of action that may accrue to ADFA by reason of any obligations guaranteed hereunder, ADFA may, at its option, proceed against one Guarantor or more than one Guarantor. It shall be no defense to a suit hereunder that all necessary parties have not been joined.
- 11. This Guaranty is an absolute, irrevocable, present and continuing guaranty, and the Section 1602 Exchange Fund Agreement between ADFA and Owner shall be conclusively presumed to have been created in reliance thereon.
- 12. This Guaranty is a primary obligation of Guarantor. No irregularity, unenforceability, or invalidity of any of the documents creating the obligations of Owner, or of any other document, item, matter, action or circumstance shall impair, release or be a defense to this Guaranty.
- 13. Should any one or more provisions of this Guaranty Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.
- 14. No provision of this Guaranty Agreement or right of ADFA hereunder can be waived nor can Guarantor be released from such Guarantor's obligations except in writing, duly executed by ADFA. This Guaranty Agreement may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever except by the express terms of a writing duly executed by ADFA.

15. This Guaranty shall be binding on, and the term “Guarantor” as used herein, shall include the successors, assigns, legal representatives and other transferees of Guarantor.
16. This Guaranty shall be construed and enforced according to the laws of the State of Arkansas.
17. This Guaranty shall terminate on the last day of the compliance period, which shall be 15 years from the date the last building of the development for which the Section 1602 Funding was awarded is placed in service as set forth in 26 U.S.C. Section 42 and all accompanying, legislation, regulations, and agency guidance.
18. Guarantor consents to the personal jurisdiction of the courts of the State of Arkansas. The parties agree that any action arising under this Guaranty must be filed in the Circuit Court of Pulaski County, Arkansas.
19. If there is more than one Guarantor, each of them has executed and delivered this Guaranty; references herein to “Guarantor” shall mean all such Guarantors, collectively, and their obligations shall be joint and several.

IN WITNESS WHEREOF, the parties have caused this Guaranty to be duly executed as of the date as first written above.

GUARANTORS:

Printed name:_____

Printed name:_____

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
COUNTY OF _____)

BEFORE ME, the undersigned Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same of the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2009.

Notary Public

My commission expires:

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
COUNTY OF _____)

BEFORE ME, the undersigned Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same of the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2009.

Notary Public

My commission expires:

THIS INSTRUMENT PREPARED BY:
Arkansas Development Finance Authority
P. O. Box 8023
Little Rock, AR 72203-8023